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11 INC.

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14

15 MARIA DE LA LUZ BAUTISTA-PEREZ, LUZ
PEREZ BAUTISTA and SALVADORA
16 CORREA, on behalf of themselves and all others
similarly situated,

17 Plaintiffs,

18 vs.

19 JUUL LABS, INC., COALITION FOR
20 REASONABLE VAPING REGULATION,
LONG YING INTERNATIONAL, INC.,
21 DAVID M. HO, and DOES 1-10 inclusive,

22 Defendants.
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Case No. 4:20-cv-01613-HSG

**DEFENDANT JUUL LABS, INC.'S ANSWER
TO PLAINTIFFS' SECOND AMENDED
COMPLAINT**

Hon. Haywood S. Gilliam, Jr.
Action Filed: March 4, 2020
FAC Filed: September 9, 2020
Trial Date: None Set

Defendant Juul Labs, Inc. (“Defendant”), by and through its undersigned attorneys hereby provides the following Answer and Affirmative Defenses in response to the Second Amended Complaint (“SAC”) filed by Plaintiffs Maria de la Luz Bautista-Perez, Luz Perez Bautista, and Salvadora Correa (“Plaintiffs”) as follows:

I. INTRODUCTION

1. Defendant admits that Plaintiffs purport to bring a class action and a representative action for state and local wage and hour claims. Defendant denies the remaining allegations in paragraph 1 of the SAC.

2. Defendant admits that Plaintiff Maria Bautista-Perez purports to bring a collective action for federal overtime pay under the Fair Labor Standards Act (“FLSA”). Defendant denies the remaining allegations in paragraph 2 of the SAC.

3. Defendant denies the allegations in paragraph 3 of the SAC.

4. The allegations in paragraph 4 state legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 4 of the SAC.

5. Defendant denies the allegations in paragraph 5 of the SAC.

6. Defendant denies the allegations in paragraph 6 of the SAC.

7. Defendant denies the allegations in paragraph 7 of the SAC.

8. The allegations in Paragraph 8 state legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 8 of the SAC.

9. Defendant denies the allegations in paragraph 9 of the SAC.

II. JURISDICTION

10. Defendant admits this Court has jurisdiction over the federal law claims in the SAC.

11. Defendant admits this Court has jurisdiction over the state and local law claims in the SAC.

III. VENUE AND INTRADISTRICT ASSIGNMENT

12. Defendant admits that venue is proper.

IV. PARTIES

A. PLAINTIFFS

1 13. The allegations in paragraph 13 state legal conclusions to which no response is required.
2 To the extent a response is required, Defendant is without sufficient knowledge or information and
3 therefore denies the allegations in paragraph 13 of the SAC.

4 14. The allegations in paragraph 14 state legal conclusions to which no response is required.
5 To the extent a response is required, Defendant is without sufficient knowledge or information and
6 therefore denies the allegations in paragraph 14 of the SAC.

7 15. The allegations in paragraph 15 state legal conclusions to which no response is required.
8 To the extent a response is required, Defendant is without sufficient knowledge or information and
9 therefore denies the allegations in paragraph 15 of the SAC.

10 **B. DEFENDANTS**

11 16. Defendant admits that it is a manufacturer of Electronic Nicotine Delivery Systems
12 (“ENDS”). Defendant admits that it is a corporation formed in Delaware with its principal place of
13 business in Washington, D.C. The remaining allegations in paragraph 16 state legal conclusions to
14 which no response is required. To the extent a response is required, Defendant denies the remaining
15 allegations in paragraph 16 of the SAC.

16 17. Defendant admits that the Coalition for Reasonable Vaping Regulation (“CRVR”) is a
17 domestic nonprofit that was formed on July 3, 2019 and applied for tax exempt status on July 9, 2019.
18 The allegation in paragraph 17(d) states a legal conclusion to which no response is required. To the
19 extent a response is required, Defendant denies this allegation. Defendant lacks knowledge or
20 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 17 of the
21 SAC and therefore denies the same.

22 18. The allegations in paragraph 18 state legal conclusions to which no response is required.
23 To the extent a response is required, Defendant denies the allegations in paragraph 18 of the SAC.

24 19. The allegation in paragraph 19(d) states a legal conclusion to which no response is
25 required. To the extent a response is required, Defendant denies this allegation. Defendant lacks
26 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
27 paragraph 19 of the SAC and therefore denies the same.

28 20. The allegation in paragraph 20(c) states a legal conclusion to which no response is

required. To the extent a response is required, Defendant denies this allegation. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 20 of the SAC and therefore denies the same.

21. The allegations in paragraph 21 state legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 21 of the SAC.

22. The allegations in paragraph 22 state legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 22 of the SAC.

23. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the SAC and therefore denies the same.

V. STATEMENT OF FACTS¹

A. Juul Countered San Francisco's Efforts to Ban the Sale of Vaping Products, Culminating in Sponsoring Proposition C.

24. Defendant denies the allegation that proposed changes in law would have resulted in a complete prohibition of ENDS. Defendant admits the remaining allegations in paragraph 24 of the SAC.

25. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding the dates and frequency of conversations between Chris Gruwell and city officials and conversations between Mark Mosher and Mr. Herrera. Defendant admits the remaining allegations in paragraph 25 of the SAC.

26. Defendant denies the allegation that it hired David Ho, Whitehurst Mosher, Nate Albee, Fabrizio Ward, LLC, or DCI Group AZ, Inc. ("DCI") in preparation for a ballot measure in April 2019. Defendant admits that it retained David Ho, Whitehurst Mosher, Nate Albee, Fabrizio Ward, LLC, and DCI as independent consultants in or around April 2019.

27. Defendant admits the allegations in paragraph 27 of the SAC.

28. Paragraph 28 contains Plaintiffs' description of a document which speaks for itself therefore no response is required.

¹ Defendant has included the headings and sub-headings listed in the SAC simply to assist the Court in reading the pleadings but does not admit the accuracy of those headings to the extent they can be construed as asserting allegations of fact or legal conclusions.

1 29. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations in paragraph 29 of the SAC and therefore denies the same.

3 30. Defendant admits that Jennifer Hochstatter made a trip to City Hall in or about May 2019
4 to submit paperwork necessary for a ballot initiative to repeal a ban on the sale of ENDS in San
5 Francisco with the assistance of an attorney. Defendant lacks knowledge or information sufficient to
6 form a belief as to the truth of the remaining allegations in paragraph 30 of the SAC and therefore denies
7 the same.

8 **B. Juul Created a Fictitious “Coalition” For Its Efforts to Prevent the Passage of the**
9 **Ordinance.**

10 31. Defendant denies the allegations in paragraph 31 of the SAC.

11 32. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations in paragraph 32 of the SAC and therefore denies the same.

13 33. Paragraph 33 consists of Plaintiffs’ description of a document which speaks for itself and
14 to which no response is required. The remaining allegations in paragraph 33 state legal conclusions to
15 which no response is required. To the extent a response is required, Defendant denies the remaining
16 allegations in paragraph 33 of the SAC.

17 34. Paragraph 34 consists of Plaintiffs’ description of a document which speaks for itself and
18 to which no response is required.

19 35. Defendant denies that it “hired” DCI and David Ho to oppose “passage of the ordinance.”
20 Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining
21 allegations in paragraph 35 of the SAC and therefore denies the same.

22 **C. In late May, Juul Became a Committee Under California Election Law and Began**
23 **Gathering Signatures for Its Proposition.**

24 36. Defendant denies the allegation that it circulated a petition titled “Act to Prevent Youth
25 Use of Vapor Products.” Defendant lacks knowledge or information sufficient to form a belief as to the
26 truth of the remaining allegations in paragraph 36 of the SAC and therefore denies the same.

27 37. Defendant admits that a Statement of Organization was filed by Jim Sutton on July 3,
28 2019. The remaining allegations in paragraph 37 state legal conclusions to which no response is

1 required. To the extent a response is required, Defendant denies the allegations in paragraph 37 of the
2 SAC.

3 38. Defendant admits that it issued a loan to CRVR in the amount of \$500,000 on or about
4 May 31, 2019. The remaining allegations in paragraph 38 consist of Plaintiffs' description of a
5 document which speaks for itself and to which no response is required.

6 39. Plaintiffs' allegations regarding sponsors listed in the unspecified "June 3, 2019 filing"
7 consist of Plaintiffs' description of a document which speaks for itself and to which no response is
8 required. To the extent the allegations in paragraph 39 seek to paraphrase or characterize the contents of
9 that written document, the document speaks for itself and Defendant denies the allegations to the extent
10 they are inconsistent with that document. The remaining allegations in paragraph 39 state legal
11 conclusions to which no response is required. To the extent a response is required, Defendant denies the
12 remaining allegations in paragraph 39 of the SAC.

13 40. The allegation in paragraph 40 states a legal conclusion to which no response is required.
14 To the extent a response is required, Defendant denies the allegation in paragraph 40 of the SAC.

15 41. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
16 allegations in paragraph 41 of the SAC and therefore denies the same.

17 42. Paragraph 42 contains Plaintiffs' description of a document which speaks for itself
18 therefore no response is required.

19 43. Paragraph 43 contains Plaintiffs' description of a document which speaks for itself and to
20 which no response is required. Paragraph 43 also contains a citation to a California statute which speaks
21 for itself and to which no response is required

22 44. Paragraph 44 contains Plaintiffs' description of a document and website, both of which
23 speak for themselves therefore no response is required.

24 **D. Prior to the Coalition's Formation as a Legal Entity, Juul Hired the Campaign Staff**
25 **that Would Eventually Supervise the Campaign Workers.**

26 45. Defendant admits that it retained consultants, including Mr. Ho, Whitehurst Mosher, and
27 Mr. Albee prior to the campaign. Defendant denies the remaining allegations in paragraph 45 of the
28 SAC.

1 46. Defendant denies the allegation that it hired Whitehurst Mosher as a consultant for the
2 Campaign on or around June 3, 2019. Defendant lacks knowledge or information sufficient to form a
3 belief as to the truth of the remaining allegations in paragraph 46 of the SAC and therefore denies the
4 same.

5 47. Paragraph 47 contains Plaintiffs' description of a document which speaks for itself and to
6 which no response is required. Further, Defendant lacks knowledge or information sufficient to form a
7 belief as to the truth of the allegations in paragraph 47 of the SAC and therefore denies the same.

8 48. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations in paragraph 48 of the SAC and therefore denies the same.

10 49. Defendant does not have knowledge or information sufficient to form a belief as to the
11 truth of the allegations in paragraph 49 of the SAC and therefore denies the same.

12 50. Plaintiffs' allegation regarding the status of CRVR as a separate legal entity is a legal
13 conclusion to which no response is required. To the extent a response is required, Defendant denies this
14 allegation. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
15 remaining allegations in paragraph 50 of the SAC and therefore denies the same.

16 51. Paragraph 51 contains a quote from a document which speaks for itself and to which no
17 response is required. Defendant lacks knowledge or information sufficient to form a belief as to the
18 truth of the remaining allegations in paragraph 51 of the SAC and therefore denies the same.

19 52. Paragraph 52 contains a series of quotes from documents which speak for themselves
20 therefore no response is required. Further, Defendant lacks knowledge or information sufficient to form
21 a belief as to the truth of the remaining allegations in paragraph 52 of the SAC and therefore denies the
22 same.

23 **E. Juul Started Developing Core Campaign Strategy With Its Hired Consultants In**
24 **June 2019.**

25 53. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
26 allegations in paragraph 53 of the SAC and therefore denies the same.

27 54. Defendant admits Ms. Hochstatter was represented by counsel in matters related to the
28 Campaign. Defendant admits the remaining allegations in paragraph 54 of the SAC.

1 55. Defendant denies the allegation that Mr. Sillin was tasked with providing a “Juul
2 Government Relations Update” on strategy calls hosted by Whitehouse Mosher. Defendant admits that
3 Mr. Kwong was tasked with providing an update on media-related issues on the strategy calls but denies
4 the allegation that Mr. Kwong was tasked with providing an “Earned Media/Communications Update.”
5 Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining
6 allegations in paragraph 55 of the SAC and therefore denies the same.

7 56. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
8 allegations in paragraph 56 of the SAC and therefore denies the same.

9 57. Defendant denies the allegation that Mr. Sutton submitted signatures on behalf of
10 Defendant. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
11 remaining allegations in paragraph 57 of the SAC and therefore denies the same.

12 **F. After the Coalition was Incorporated, It Failed to Comply with Required Corporate**
13 **Formalities and Made a Number of Misstatements to The Internal Revenue Service When**
14 **Applying for Nonprofit Status.**

15 58. Defendant admits the allegations in paragraph 58 of the SAC.

16 59. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
17 remaining allegations in paragraph 59 of the SAC and therefore denies the same.

18 60. Paragraph 60 consists of Plaintiffs’ description of a document which speaks for itself and
19 to which no response is required. To the extent the allegations in paragraph 60 seek to paraphrase or
20 characterize the contents of that written document, the document speaks for itself and Defendant denies
21 the allegations to the extent they are inconsistent with that document. Defendant lacks knowledge or
22 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 60 and
23 therefore denies the same.

24 61. Paragraph 61 consists of Plaintiffs’ description of a document which speaks for itself and
25 to which no response is required. Defendant lacks knowledge or information sufficient to form a belief
26 as to the truth of the remaining allegations in paragraph 61 and therefore denies the same.

27 62. Paragraph 62 consists of Plaintiffs’ description of a document which speaks for itself and
28 to which no response is required. Defendant lacks knowledge or information sufficient to form a belief

as to the truth of the remaining allegations in paragraph 62 and therefore denies the same.

63. Paragraph 63 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 63.

64. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 and therefore denies the same.

65. Paragraph 65 consists of Plaintiffs' description of a document which speaks for itself and to which no response is required.

66. Defendant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66 of the SAC and therefore denies the same.

67. Defendant admits that Jon Berrier was an officer for CRVR. Defendant further admits that Jon Berrier was and still is the Senior Director of State Government Affairs for Defendant. Defendant denies the remaining allegations in paragraph 67 of the SAC.

68. Defendant admits that Tait Campbell and Ryan Hanretty were also officers for CRVR. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 68 of the SAC and therefore denies the same.

G. Juul Provided the Near Exclusive Funding for the Campaign Committee.

69. Defendant denies the allegations in paragraph 69 of the SAC.

70. Defendant admits the allegations in paragraph 70 of the SAC.

71. Paragraph 71 consists of Plaintiffs' description of a publicly filed document which speaks for itself and to which no response is required.

72. Paragraph 72 consists of Plaintiffs' description of a document which speaks for itself and to which no response is required. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 72 of the SAC and therefore denies the same.

73. Paragraph 72 consists of Plaintiffs' description of documents which speaks for themselves and to which no response is required. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 72 of the SAC and therefore denies the same.

74. Defendant does not have knowledge or information sufficient to form a belief as to the

1 truth of the allegations in paragraph 74 of the SAC.

2 75. Defendant admits that its finances were maintained separately from CRVR's finances and
3 that CRVR has not repaid all of the loans provided by Defendant. Defendant lacks knowledge or
4 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 75 of the
5 SAC and therefore denies the same.

6 **H. Juul Continued to Have Operational Control over the Campaign Even After the**
7 **Coalition Was Incorporated.**

8 76. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations regarding the terminology used by individuals from Whitehurst Mosher and Long Ying and
10 therefore denies the same. Defendant denies the remaining allegations in paragraph 76 of the SAC.

11 77. Defendant admits that Mr. Sillin was aware of the Campaign's spending. Defendant does
12 not have knowledge or information sufficient to form a belief as to the truth of the remaining allegations
13 in paragraph 77 of the SAC and therefore denies the same.

14 78. Paragraph 78 consists of Plaintiffs' description of a document which speaks for itself and
15 to which no response is required. Defendant does not have knowledge or information sufficient to form
16 a belief as to the truth of the remaining allegations in paragraph 78 of the SAC and therefore denies the
17 same.

18 79. Defendant admits the allegations in paragraph 79 of the SAC.

19 80. Paragraph 80 consists of Plaintiffs' description of a document which speaks for itself and
20 to which no response is required.

21 81. Defendant denies that it made direct payments to consultants engaged by CRVR for work
22 on the Campaign. Defendant does not have knowledge or information sufficient to form a belief as to
23 the truth of the remaining allegations in paragraph 81 of the SAC and therefore denies the same.

24 **I. From July through September 2019, the Long Ying Defendant and the Coalition**
25 **Hired Plaintiffs and Other Campaign Workers to Work on the Campaign.**

26 82. Defendant admits that Long Ying handled all aspects of the hiring of Plaintiffs and the
27 putative class members. Defendant lacks knowledge or information sufficient to form a belief as to the
28 truth of the remaining allegations in paragraph 82 and therefore denies the same.

1 83. Defendant admits the allegations in paragraph 83 of the SAC.

2 84. Defendant admits that Long Ying handled all aspects of the hiring of Plaintiffs and the
3 putative class members. Defendant lacks knowledge or information sufficient to form a belief as to the
4 truth of the remaining allegations in paragraph 84 and therefore denies the same.

5 85. Defendant admits that Long Ying handled all aspects of the hiring of Plaintiffs and the
6 putative class members. Defendant lacks knowledge or information sufficient to form a belief as to the
7 truth of the remaining allegations in paragraph 85 and therefore denies the same.

8 86. Defendant admits that Long Ying handled all aspects of the hiring of Plaintiffs and the
9 putative class members. Defendant lacks knowledge or information sufficient to form a belief as to the
10 truth of the remaining allegations in paragraph 86 and therefore denies the same.

11 87. Defendant admits that Long Ying handled all aspects of the hiring of Plaintiffs and the
12 putative class members. Defendant lacks knowledge or information sufficient to form a belief as to the
13 truth of the remaining allegations in paragraph 87 and therefore denies the same.

14 88. Defendant admits that Long Ying handled all aspects of the hiring of Plaintiffs and the
15 putative class members. Defendant admits on information and belief that Long Ying retained Plaintiffs
16 and the putative class members as independent contractors. Defendant lacks knowledge or information
17 sufficient to form a belief as to the truth of the remaining allegations in paragraph 88 and therefore
18 denies the same.

19 89. Defendant admits that Long Ying handled all aspects of the hiring of Plaintiffs and the
20 putative class members. Defendant admits on information and belief that Long Ying retained Plaintiffs
21 and the putative class members as independent contractors. Defendant lacks knowledge or information
22 sufficient to form a belief as to the truth of the remaining allegations in paragraph 89 and therefore
23 denies the same.

24 90. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegations in paragraph 90 and therefore denies the same.

26 **J. Campaign Workers, Including Plaintiffs, Worked Under the Supervision of Staff**
27 **Hired by A Number of Entities Affiliated with the Campaign, including the Coalition, Long**
28 **Ying, and S2 Partners, Were Required to Follow Policies Set Forth by the Coalition and**

Juul.

91. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 91 and therefore denies the same.

92. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 92 and therefore denies the same.

93. Defendant denies the allegation that leads and administrators reported directly or indirectly to Mr. Sillin. Defendant denies the allegation that Mr. Ho reported to Mr. Sillin. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 93.

94. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 94 and therefore denies the same.

95. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 95 and therefore denies the same.

96. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 96 and therefore denies the same.

97. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 97 and therefore denies the same.

98. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 98 and therefore denies the same.

99. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 99 and therefore denies the same.

100. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 100 and therefore denies the same.

101. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 101 and therefore denies the same.

102. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 102 and therefore denies the same.

103. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the

1 allegations in paragraph 103 and therefore denies the same.

2 104. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
3 allegations in paragraph 104 and therefore denies the same.

4 105. Defendant admits that a “lit drop” is defined as the distribution of literature. Defendant
5 lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
6 paragraph 105 and therefore denies the same.

7 106. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
8 allegations in paragraph 106 and therefore denies the same.

9 107. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
10 allegations in paragraph 107 and therefore denies the same.

11 108. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations in paragraph 108 and therefore denies the same.

13 109. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
14 allegations in paragraph 109 and therefore denies the same.

15 110. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
16 allegations in paragraph 110 and therefore denies the same.

17 111. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
18 allegations in paragraph 111 and therefore denies the same.

19 112. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
20 allegations in paragraph 112 and therefore denies the same.

21 113. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
22 allegations in paragraph 113 and therefore denies the same.

23 114. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
24 allegations in paragraph 114 and therefore denies the same.

25 115. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
26 allegations in paragraph 115 and therefore denies the same.

27 **K. Some Campaign Workers Hired Through Staffing Agencies Were Acknowledged**
28 **Employees and Worked the Same Job as the “Independent Contractor” Campaign Worker**

1 **at Issue Here.**

2 116. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
3 allegations in paragraph 116 and therefore denies the same.

4 117. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
5 allegations in paragraph 117 and therefore denies the same.

6 118. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
7 allegations in paragraph 118 and therefore denies the same.

8 119. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
9 allegations in paragraph 119 and therefore denies the same.

10 120. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
11 allegations in paragraph 120 and therefore denies the same.

12 121. Defendant does not have knowledge or information sufficient to form a belief as to the
13 truth of the allegations in paragraph 121 of the SAC.

14 122. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
15 allegations in paragraph 122 and therefore denies the same.

16 123. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
17 allegations in paragraph 123 and therefore denies the same.

18 **L. Throughout the Campaign, Juul, through its Representative Nathaniel Sillin,**
19 **Maintained Control over Campaign Workers' Wages, Hours, and Working Conditions.**

20 124. Defendant denies the allegation that Mr. Sillin coordinated the field campaign.
21 Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in
22 paragraph 124 and therefore denies the same.

23 125. Defendant denies the allegations in paragraph 125 of the SAC.

24 126. Defendant denies the allegation that Mr. Sillin had control over the Campaign Workers'
25 working conditions. The remaining allegations in paragraph 126 consist of Plaintiffs' description of a
26 document which speaks for itself and for which no response is required. Defendant lacks knowledge or
27 information sufficient to form a belief as to the truth of the allegations regarding "other" unspecified
28 discussions regarding scripts used by Campaign Workers and therefore denies the same.

1 127. Defendant denies the allegation that Mr. Sillin had control over the scripts Campaign
2 Workers used on the job. The remaining allegations in paragraph 127 consist of Plaintiffs' description
3 of a document which speaks for itself and for which no response is required. To the extent a response is
4 required, Defendant denies the allegation.

5 128. Defendant denies the allegation that Mr. Sillin had control over how many Campaign
6 Workers were hired. To the extent a response is required, Defendant denies the allegation. The
7 remaining allegations in paragraph 128 consist of Plaintiffs' description of a document which speaks for
8 itself and for which no response is required.

9 129. Defendant denies the allegation that Mr. Sillin had control over the compensation paid to
10 Campaign Workers. Defendant does not have knowledge or information sufficient to form a belief as to
11 the truth of the allegation that Whitehurst Mosher had control over the compensation paid to Campaign
12 Workers and therefore denies the same. The remaining allegations in paragraph 129 consist of
13 Plaintiffs' description of documents which speak for themselves and for which no response is required.

14 130. Defendant denies the allegation that Mr. Sillin had control over the supervision of
15 Campaign Workers and allocation of staff on the Campaign. The remaining allegations in paragraph
16 130 consist of Plaintiffs' description of a document which speaks for itself and for which no response is
17 required.

18 131. Defendant denies the allegation that Mr. Sillin had control over the Campaign Workers'
19 hours. The remaining allegations in paragraph 131 consist of Plaintiffs' description of a document
20 which speaks for itself and for which no response is required.

21 132. Defendant denies the allegation that Mr. Sillin had control over whether to discharge
22 Campaign Workers. The remaining allegations in paragraph 132 consist of Plaintiffs' description of a
23 document which speaks for itself and for which no response is required.

24 133. Defendant denies the allegation in paragraph 133 of the SAC regarding Mr. Sillin
25 reporting to and seeking approval from Defendant's CEO. Defendant does not have knowledge or
26 information sufficient to form a belief as to the truth of the remaining allegations in paragraph 133 of the
27 SAC and therefore denies the same.

28 134. Defendant denies the allegation that CRVR was merely a shell for Defendant. Defendant

1 does not have knowledge or information sufficient to form a belief as to the truth of the remaining
2 allegations in paragraph 134 of the SAC and therefore denies the same.

3 **M. Most Campaign Workers Were Discharged in Late September or Early October**
4 **After Juul Decided to Suspend the Campaign.**

5 135. Defendant does not have knowledge or information sufficient to form a belief as to the
6 truth of the allegations in paragraph 135 of the SAC and therefore denies the same.

7 136. Defendant admits the allegations in paragraph 136 of the SAC.

8 137. Defendant denies the allegations in paragraph 137 of the SAC.

9 138. Defendant denies the allegations that Mr. Sillin emphasized any language in his
10 communication to Mr. Albee. Defendant admits the remaining allegations in paragraph 138 of the SAC.

11 139. Defendant does not have knowledge or information sufficient to form a belief as to the
12 truth of the allegations in paragraph 139 of the SAC and therefore denies the same.

13 140. Plaintiffs' allegations regarding "administrative and clerical tasks" are legal conclusions
14 to which no response is required. Defendant does not have knowledge or information sufficient to form
15 a belief as to the truth of the remaining allegations in paragraph 140 of the SAC and therefore denies the
16 same.

17 141. Defendant does not have knowledge or information sufficient to form a belief as to the
18 truth of the allegations in paragraph 141 of the SAC and therefore denies the same.

19 **VI. CLASS ACTION ALLEGATIONS**

20 142. Defendant admits that Plaintiffs bring claims for violations of federal, state, and local
21 wage and hour laws and seek to certify a class under Rule 23(b)(3) of the Federal Rules of Civil
22 Procedure. The remaining allegations in Paragraph 142 consist of legal conclusions for which no
23 response is required. To the extent a response is required, Defendant denies the allegations in paragraph
24 142.

25 143. Paragraph 143 consists of a legal conclusion to which no response is required. To the
26 extent a response is required, Defendant denies the allegations in paragraph 143.

27 144. Paragraph 144 consists of a legal conclusion to which no response is required. To the
28 extent a response is required, Defendant denies the allegations in paragraph 144.

1 145. Paragraph 145 consists of legal conclusions to which no response is required. To the
2 extent a response is required, Defendant denies the allegations in paragraph 145

3 146. Paragraph 146 consists of a legal conclusion to which no response is required. To the
4 extent a response is required, Defendant denies the allegations in paragraph 146.

5 147. Paragraph 147 consists of a legal conclusion to which no response is required. To the
6 extent a response is required, Defendant denies the allegations in paragraph 147.

7 148. Paragraph 148 consists of a legal conclusion to which no response is required. To the
8 extent a response is required, Defendant denies the allegations in paragraph 148.

9 **VII. COLLECTIVE ACTION ALLEGATIONS**

10 149. Defendant admits that Plaintiff Maria Bautista-Perez brings claims under the FLSA as a
11 collective action under 29 U.S.C. § 216(b). The remaining allegations in Paragraph 149 consist of legal
12 conclusions for which no response is required. To the extent a response is required, Defendant denies
13 the allegations in paragraph 149.

14 150. Paragraph 150 consists of a legal conclusion to which no response is required. To the
15 extent a response is required, Defendant denies the allegations in paragraph 150.

16 151. Paragraph 151 consists of a legal conclusion to which no response is required. To the
17 extent a response is required, Defendant denies the allegations in paragraph 151.

18 152. Defendant denies the allegations in paragraph 152 as they pertain to Defendant and
19 denies that Plaintiff is entitled to any contact information of putative collective action members.

20 **VIII. CLAIMS**

21 **FIRST CLAIM**

22 **Failure To Pay Full Wages Owed Promptly At Separation**

23 **Calif. Labor Code §§ 201, 203, & 2810.3**

24 **(ON BEHALF OF PLAINTIFFS, CLASS AND SUBCLASS)**

25 153. This paragraph re-alleges and incorporates all preceding paragraphs. Defendant
26 incorporates its responses to all preceding paragraphs as if fully set forth hereinafter.

27 154. This paragraph describes California Labor Code § 201 and § 203, statutory provisions
28 that speaks for themselves, and contains allegations that constitute conclusions of law, to which no

1 response is required. To the extent a response is required, Defendant denies the allegation that it
2 violated California Labor Code § 201 and § 203.

3 155. Defendant denies the allegations in paragraph 155 of the SAC.

4 156. Defendant denies the allegations in paragraph 156 of the SAC.

5 157. Defendant denies that Plaintiffs and the putative class are entitled to any relief as alleged
6 in paragraph 157 of the SAC.

7 **SECOND CLAIM**

8 **Failure To Furnish Accurate Wage Statements**

9 **Calif. Labor Code § 226**

10 **(ON BEHALF OF PLAINTIFFS AND CLASS)**

11 158. This paragraph re-alleges and incorporates all preceding paragraphs. Defendant
12 incorporates its responses to all preceding paragraphs as if fully set forth hereinafter.

13 159. This paragraph describes California Labor Code § 226(e), a statutory provision that
14 speaks for itself, and contains allegations that constitute conclusions of law, to which no response is
15 required. To the extent a response is required, Defendant denies that it violated California Labor Code §
16 226.

17 160. Defendant denies the allegations in paragraph 160 of the SAC.

18 161. Defendant denies that Plaintiffs and the putative class are entitled to any relief as alleged
19 in paragraph 161 of the SAC.

20 **THIRD CLAIM**

21 **Failure To Pay California Minimum Wage**

22 **Calif. 1182.11, 1182.12, 1194, 1194.2, 1197, & 2810.3,**

23 **Calif. IWC Wage Order No. 4 § 4, & Minimum Wage Order**

24 **(ON BEHALF OF PLAINTIFFS AND SUBCLASS)**

25 162. This paragraph re-alleges and incorporates all preceding paragraphs. Defendant
26 incorporates its responses to all preceding paragraphs as if fully set forth hereinafter.

27 163. This paragraph describes California Labor Code §§ 1182.11, 1182.12, 1194, and 1197,
28 California IWC Wage Order No. 4, §4, and the California Minimum Wage Order, statutory and

1 regulatory provisions that speaks for themselves, and no response is required. Defendant denies that it
2 violated these Labor Code section and Wage Orders.

3 164. This paragraph describes California Labor Code § 1194, a statutory provision that speaks
4 for itself, and no response is required.

5 165. This paragraph describes California Labor Code § 1194.2, a statutory provision that
6 speaks for itself, and no response is required.

7 166. This paragraph describes California Labor Code § 1197.1, a statutory provision that
8 speaks for itself, and no response is required.

9 167. Defendant does not have knowledge or information sufficient to form a belief as to the
10 truth of the factual allegations in paragraph 167 of the SAC and therefore denies the same.

11 168. Defendant denies that Plaintiffs and the putative class are entitled to any relief as alleged
12 in paragraph 168 of the SAC.

13 **FOURTH CLAIM**

14 **Failure To Pay San Francisco Minimum Wage,**

15 **San Fran. Admin. Code § 12r.4 & Labor Code 2810.3**

16 **(ON BEHALF OF PLAINTIFFS AND SUBCLASS)**

17 169. This paragraph re-alleges and incorporates all preceding paragraphs. Defendant
18 incorporates its responses to all preceding paragraphs as if fully set forth hereinafter.

19 170. This paragraph describes San Francisco Administrative Code § 12.R4, a statutory
20 provision that speaks for itself, and no response is required. Defendant denies that it violated San
21 Francisco Administrative Code § 12.R4.

22 171. This paragraph describes San Francisco Administrative Code § 12.R3, a statutory
23 provision that speaks for itself, and no response is required.

24 172. This paragraph describes San Francisco Administrative Code § 12.R7, a statutory
25 provision that speaks for itself, and no response is required.

26 173. Defendant does not have knowledge or information sufficient to form a belief as to the
27 truth of the factual allegations in paragraph 173 of the SAC and therefore denies the same.

28 174. Defendant denies that Plaintiffs and the putative class are entitled to any relief as alleged

1 in paragraph 174 of the SAC.

2 **FIFTH CLAIM**

3 **Failure To Pay Overtime Wages**

4 **Calif. Labor Code §§ 510, 1194, 2810.3**

5 **& IWC Wage Order No. 4 § 3**

6 **(ON BEHALF OF PLAINTIFF AND WORK RELATED TRAVEL SUBCLASS)**

7 175. This paragraph re-alleges and incorporates all preceding paragraphs. Defendant
8 incorporates its responses to all preceding paragraphs as if fully set forth hereinafter.

9 176. Defendant does not have knowledge or information sufficient to form a belief as to the
10 truth of the allegations in paragraph 176 of the SAC and therefore denies the same.

11 177. Paragraph 177 consists of a legal conclusion to which no response is required. To the
12 extent a response is required, Defendant denies the allegation in paragraph 177.

13 178. Paragraph 178 consists of a legal conclusion to which no response is required. To the
14 extent a response is required, Defendant denies the allegations in paragraph 178.

15 179. Defendant denies that Plaintiffs and the putative class are entitled to any relief as alleged
16 in paragraph 179 of the SAC.

17 **SIXTH CLAIM**

18 **Failure To Reimburse For Necessary Business**

19 **Expenses Calif. Labor Code § 2802**

20 **(ON BEHALF OF PLAINTIFFS AND SUBCLASS)**

21 180. This paragraph re-alleges and incorporates all preceding paragraphs. Defendant
22 incorporates its responses to all preceding paragraphs as if fully set forth hereinafter.

23 181. This paragraph describes California Labor Code § 2802, a statutory provision that speaks
24 for itself, and no response is required. Defendant denies that it violated California Labor Code § 2802.

25 182. Defendant denies the allegations in paragraph 182 of the SAC.

26 183. Defendant admits that Plaintiffs seek to certify various classes and seek unreimbursed
27 expenses, interest, costs incurred, attorneys' fees, and other relief. Defendant denies any class
28 certification is appropriate and deny that Plaintiffs and putative class members are entitled to any of the

1 relief sought.

2 **SEVENTH CLAIM**

3 **Failure To Provide Meal Periods Calif.**

4 **Labor Code §§ 226.7, 512, 2810.3 & Iwc Wage Order No. 4 § 11**

5 **(ON BEHALF OF PLAINTIFFS AND SUBCLASS)**

6 184. This paragraph re-alleges and incorporates all preceding paragraphs. Defendant
7 incorporates its responses to all preceding paragraphs as if fully set forth hereinafter.

8 185. This paragraph describes California Labor Code §§ 226.7, 512, and California IWC
9 Wage Order No. 4, §11, statutory and regulatory provisions that speaks for themselves, and no response
10 is required. Defendant denies that it violated California Labor Code §§ 226.7, 512, and California IWC
11 Wage Order No. 4, §11.

12 186. Defendant does not have knowledge or information sufficient to form a belief as to the
13 truth of the allegations in paragraph 186 of the SAC and therefore denies the same.

14 187. Defendant admits that Plaintiffs seek to certify various classes and seek premium pay for
15 missed meal periods, interest, and such other legal and equitable relief. Defendant denies any class
16 certification is appropriate and deny that Plaintiffs and putative class members are entitled to any of the
17 relief sought.

18 **EIGHTH CLAIM**

19 **Violations Of Unfair Competition Law Calif. Bus.**

20 **& Prof. Code § 17200 Et Seq.**

21 **(ON BEHALF OF PLAINTIFFS, CLASS, AND SUBCLASS)**

22 188. This paragraph re-alleges and incorporates all preceding paragraphs. Defendant
23 incorporates its responses to all preceding paragraphs as if fully set forth hereinafter.

24 189. This paragraph describes California Business and Professions Code § 17200, a statutory
25 provision that speaks for itself, and no response is required. Defendant denies that it violated California
26 Business and Professions Code § 17200.

27 190. This paragraph describes California Business and Professions Code § 17204, a statutory
28 provision that speaks for itself, and no response is required.

191. Paragraph 191 consists of several legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 191.

192. Paragraph 192 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 192.

193. Paragraph 193 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 193.

194. Defendant denies that Plaintiffs and the putative class are entitled to any relief as alleged in paragraph 194 of the SAC.

195. Defendant admits that Plaintiffs seek attorneys' fees under California Code of Civil Procedure § 1021.5. Defendant denies any liability under California Business and Professions Code § 17200 et seq., and, therefore, attorneys' fees under California Code of Civil Procedure § 1021.5 are not recoverable.

196. Defendant admits that Plaintiffs seek relief as described in Plaintiffs' Second Amended Complaint. Defendant denies that Plaintiffs and putative class members are entitled to any relief requested.

NINTH CLAIM

Failure To Pay Overtime Wages under FLSA, 29 U.S.C. § 201 Et Seq.

(ON BEHALF OF PLAINTIFF MARIA BAUTISTA-PEREZ

AND FLSA COLLECTIVE ACTION MEMBERS)

197. This paragraph re-alleges and incorporates all preceding paragraphs. Defendant incorporates its responses to all preceding paragraphs as if fully set forth hereinafter.

198. This paragraph describes 29 U.S.C. § 207, a statutory provision that speaks for itself, and no response is required. Defendant denies that it violated 29 U.S.C. § 201 et seq.

199. Defendant does not have knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 199 of the SAC and therefore denies the same.

200. Paragraph 200 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 200.

201. Defendant denies that Plaintiffs and the putative class are entitled to any relief as alleged in paragraph 201 of the SAC.

TENTH CLAIM

Liability For Civil Penalties Under PAGA

Cal. Labor Code §§ 2698 Et Seq.

(ON BEHALF OF PLAINTIFFS AND STATE OF CALIFORNIA)

202. This paragraph re-alleges and incorporates all preceding paragraphs. Defendant incorporates its responses to all preceding paragraphs as if fully set forth hereinafter.

203. This paragraph describes California Labor Code § 2699, a statutory provision that speaks for itself, and no response is required. Defendant denies that it violated the California Labor Code.

204. Paragraph 204 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendant denies that it violated the California Labor Code.

205. Paragraph 205 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 205.

206. Paragraph 206 consists of a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 206.

207. Defendant admits that Plaintiff served Defendant with a written notice of their intent to seek PAGA penalties. Defendant does not have knowledge or information sufficient to form a belief as to the truth of the allegation that the Labor and Workforce Development Agency (“LWDA”) did not issue notice of its intention to pursue civil penalties. The remaining allegations in paragraph 207 describes California Labor Code § 2699, a statutory provision that speaks for itself, and no response is required. Defendant denies that Plaintiff properly exhausted its administrative remedies and further denies that it violated the California Labor Code.

208. Defendant admits that Plaintiffs request relief. Defendant denies that Plaintiffs and putative class members are entitled to any relief requested.

AFFIRMATIVE DEFENSES

1 **FIRST AFFIRMATIVE DEFENSE**

2 **(Failure to State a Claim)**

- 3 1. The SAC fails to state a claim upon which relief may be granted against Defendant.

4 **SECOND AFFIRMATIVE DEFENSE**

5 **(No Employment)**

- 6 2. The claims of Plaintiffs and/or the putative class/collective members are barred because
7 Defendant did not employ Plaintiffs and/or the putative class/collective members, such that Defendant
8 had no legal duty or obligation with respect to the matters complained of in the SAC.

9 **THIRD AFFIRMATIVE DEFENSE**

10 **(No Wages, Compensation, or Reimbursement Owed)**

- 11 3. The claims of Plaintiffs and/or the putative class/collective members are barred because
12 Plaintiffs and/or the putative class/collective members have been paid and/or received all wages,
13 compensation, and reimbursement due to them.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 **(No Violation of Law)**

- 16 4. The claims of Plaintiffs and/or the putative class/collective members are barred because
17 Defendant did not violate any law in connection with the allegations of the SAC, and Defendant acted at
18 all times with good faith and in compliance with controlling applicable laws and regulations.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 **(No Alter Ego Liability)**

- 21 5. The claims of Plaintiffs and/or the putative class/collective members are barred because
22 Defendant is not an alter ego of any entity that may be found liable for the matters complained of in the
23 SAC.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 **(No Damages, Harm, or Injury)**

- 26 6. The claims of Plaintiffs and/or the putative class/collective members are barred because
27 Plaintiffs and/or the putative class/collective members suffered no damages, harm, or injury with respect
28 to the allegations of the SAC.

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(Lack of Standing)**

3 7. The claims of Plaintiffs and/or the putative class/collective members are barred in whole
4 or in part because Plaintiffs and/or the putative class/collective members lack standing to assert such
5 claims.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 **(Expenses Not Reimbursable)**

8 8. The claims of Plaintiffs and/or the putative class/collective members are barred in whole
9 or in part to the extent the expenses alleged in the SAC are not reimbursable.

10 **NINTH AFFIRMATIVE DEFENSE**

11 **(Failure to Exhaust Remedies)**

12 9. The claims of Plaintiffs and/or the putative class/collective members are barred in whole
13 or in part to the extent they failed to exhaust administrative, statutory, or contractual remedies available
14 to them.

15 **TENTH AFFIRMATIVE DEFENSE**

16 **(Failure to Follow Administrative Requirements)**

17 10. The claims of Plaintiffs and/or the putative class/collective members are barred in whole
18 or in part to the extent they failed to follow administrative requirements and prerequisites to relief,
19 including any applicable notice requirements under the Private Attorneys General Act.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 **(Unclean Hands)**

22 11. The claims of Plaintiffs and/or the putative class/collective members are barred under the
23 equitable doctrine of unclean hands.

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 **(Waiver/Estoppel)**

26 12. The claims of Plaintiffs and/or the putative class/collective members are barred under the
27 equitable doctrines of waiver and/or estoppel.
28

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Relief Unavailable)**

3 13. The claims of Plaintiffs and/or the putative class/collective members are barred to the
4 extent they seek relief unavailable under the causes of action asserted, including monetary relief under
5 California's Unfair Competition Law.

6 **FOURTEENTH AFFIRMATIVE DEFENSE**

7 **(Failure to Mitigate Damages)**

8 14. The claims of Plaintiffs and/or the putative class/collective members are barred by
9 Plaintiffs' and/or the putative class members' failure, refusal, and/or neglect to mitigate or avoid the
10 damages complained of in the SAC, if any.

11 **FIFTEENTH AFFIRMATIVE DEFENSE**

12 **(Offset)**

13 15. The claims of Plaintiffs and/or the putative class/collective members are barred in whole
14 or in part because any recovery must be offset or reduced by any benefits and/or other monies they have
15 received.

16 **SIXTEENTH AFFIRMATIVE DEFENSE**

17 **(Unjust Enrichment)**

18 16. The claims of Plaintiffs and/or the putative class/collective members are barred to the
19 extent that any award in this action is speculative, uncertain, or would constitute unjust enrichment.

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**

21 **(Multiple Recovery Precluded)**

22 17. The claims of Plaintiffs and/or the putative class/collective members are barred to the
23 extent that any award in this action results in multiple recovery for the same alleged wrong or wrongs.

24 **EIGHTEENTH AFFIRMATIVE DEFENSE**

25 **(De Minimis Time)**

26 18. The claims of Plaintiffs and/or the putative class/collective members are barred to the
27 extent that any alleged unpaid time was non-compensable in that it was *de minimis* or without
28 Defendant's knowledge or authorization.

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 **(Consent)**

3 19. The claims of Plaintiffs and/or the putative class/collective members claims are barred, in
4 whole or in part, because Plaintiffs and/or the putative class/collective members consented to the
5 conduct about which they now complain.

6 **TWENTIETH AFFIRMATIVE DEFENSE**

7 **(Indemnity/Contribution)**

8 20. The claims of Plaintiffs and/or the putative class/collective members claims are barred, in
9 whole or in part, to the extent that Defendant is entitled to full or partial indemnity and/or contribution
10 from such other individuals or entities (including, without limitation, non-parties) as are found to have
11 proximately caused the injuries and/or damages claimed in the SAC and/or who expressly, equitably, or
12 impliedly agreed to indemnify, defend, or hold harmless Defendant from damages or liabilities such as
13 those claimed in the SAC.

14 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

15 **(Subrogation/Contribution)**

16 21. Defendant asserts and alleges that to the extent it is found liable for any claims or
17 damages alleged in the SAC, all other individuals and entities liable in whole or in part for the matters
18 complained of are equitably obligated to contribute to all or a portion of any sum sought by and awarded
19 to Plaintiffs and/or the putative class/collective members, regardless of whether such other individuals or
20 entities are parties to this action.

21 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

22 **(Statutes of Limitations and Repose)**

23 22. The claims of Plaintiffs and/or the putative class/collective members are barred by the
24 applicable statutes of limitations and repose.

25 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

26 **(Laches)**

27 23. The claims of Plaintiffs and/or the putative class/collective members are barred by the
28 doctrine of laches.

1 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(Avoidable Consequences)**

3 24. The claims of Plaintiffs and the putative class/collective members are barred, or recovery
4 should be reduced, pursuant to the doctrine of avoidable consequences.

5 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

6 **(Good Faith Defense)**

7 25. The claims of Plaintiffs and the putative class/collective members are barred because,
8 without admitting that any violation took place, any violation of the Federal Labor Standards Act,
9 California Labor Code, a Wage Order of the Industrial Welfare Commission, or the San Francisco
10 Administrative Code was an act or omission made in good faith, and in any participation in such acts,
11 Defendant had reasonable grounds for believing that the act or omission was not a violation of the
12 Federal Labor Standards Act, California Labor Code, any Wage Order of the Industrial Welfare
13 Commission, or the San Francisco Administrative Code.

14 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

15 **(Good Faith Conduct)**

16 26. Plaintiffs and the putative class/collective members were treated fairly and in good faith,
17 and all actions taken with regard to them were taken for lawful business reasons and in good faith.

18 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

19 **(No Willful or Intentional Failure to Pay)**

20 27. Assuming, *arguendo*, that Plaintiffs and the putative class/collective members are entitled
21 to additional compensation, Defendant have not willfully or intentionally failed to pay any such
22 additional compensation to Plaintiffs and the putative class/collective members, to justify any awards of
23 penalties or fees.

24 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

25 **(Punitive Damages Must Comport with Due Process)**

26 28. To the extent that Plaintiffs claim penalties, such claims must comport with the due
27 process requirements of *State Farm v. Campbell*, 538 U.S. 408 (2003) and subsequent case law
28 regarding the same issue.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Fines and Penalties Excessive)

29. The claims of Plaintiffs and/or the putative class/collective members are barred in whole or in part on the grounds that the fines or penalties sought under the SAC are excessive.

THIRTIETH AFFIRMATIVE DEFENSE

(No Unfair Business Practices)

30. Defendant's business actions or practices were not unfair, unlawful, fraudulent or deceptive within the meaning of California Business and Professions Code sections 17200 *et seq.*

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Arbitration)

31. The claims of Plaintiffs and the putative class/collective members are barred because they are subject to contractual arbitration.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(No Attorney's Fees)

32. The SAC fails to properly state a claim for attorney's fees.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Class/Collective Action Cannot Be Maintained)

33. This suit may not be properly maintained as a class or collective action because: (1) Plaintiffs have failed to plead, and cannot establish the necessary procedural elements for class treatment; (2) the putative class is not so numerous that joinder of all members is impracticable; (3) there are no questions of law or fact common to the class; (4) Plaintiffs' claims are not representative or typical of the claims of the putative class; (5) Plaintiffs cannot fairly and adequately protect the interests of the class or are otherwise not adequate class representatives; (6) a class action is not an appropriate method for the fair and efficient adjudication of the claims described in the SAC; (7) individual questions of fact and law predominate; (8) Plaintiffs cannot satisfy any of the requirements for class action treatment, and class action treatment is neither appropriate nor constitutional; (9) there is not a well-defined community of interest in the questions of law or fact affecting Plaintiffs and the members of the alleged putative class; and (10) the alleged putative class is not ascertainable or identifiable.

1 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(Affirmative Defenses Applicable to Putative Class/Collective Members)**

3 34. Each of the affirmative defenses asserted herein are also asserted, on information and
4 belief, with respect to each member of the putative class/collective members.

5 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

6 **(Reservation of Affirmative Defenses)**

7 35. Defendant reserves the right to subsequently assert and allege affirmative defenses to the
8 SAC, and any part and/or whole thereof, as they become known.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Defendant pray for judgment from this Court as follows:

- 12 1. that Plaintiffs take nothing by way of their Second Amended Complaint;
13 2. that the Second Amended Complaint be dismissed with prejudice and that judgment be
14 entered against Plaintiffs and in favor of Defendant on each cause of action;
15 3. that Defendant be awarded reasonable attorneys' fees and its costs of suit herein; and
16 4. such other and further relief as the Court deems just and proper.

17
18 Date: May 11, 2021

FOLEY & LARDNER LLP

Eileen R. Ridley

Kaleb N. Berhe

Jason Y. Wu

21
22 /s/ Kaleb N. Berhe

Kaleb N. Berhe

23 Attorneys for Defendant JUUL LABS, INC.
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